IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7643 of 1993

with

SPECIAL CIVIL APPLICATION No.7732, 7733, 7734,
7828, 7829, 7830, 7831,
7850 and 7851 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRNAR STONE QUARRY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7643 of 1993
MR BJ JADEJA for Petitioner No. 1
MR AD OZA GOVERNMENT PLEADER for Respondent No. 1-3

2. Special Civil Application No. 7828 of 1993
MR BJ JADEJA for Petitioner No. 1
MR AD OZA GOVERNMENT PLEADER for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/12/2002

COMMON ORAL JUDGEMENT

#. Heard learned advocate Mr.B.J.Jadeja on behalf of the petitioners and learned AGP Mr.A.D.Oza appearing on behalf of the respondents.

Since common question of facts and law involved in this group of ten petitions, all these petitions heard together and the same are being disposed of by this common judgment.

#. Learned advocate Mr.Jadeja appearing on behalf of the petitioners has submitted that the respondent authorities have granted N.A. Permission respect of the land in question in favour of the petitioners for establishing quarry and thereafter land revenue for N.A. use was to be recovered at the rate of Rs.0.06 ps. per sq.mtr. as stated in the order which is at Annexure-A to the petition. Thereafter, the Government of Gujarat by making amendment in Rule-81 of the Gujarat Land Revenue Rules, 1972 has enhanced rates of the land revenue as per the Notification dated 8th April, 1992 as per the table given on page-3 of the petition. Thereafter, the State of Gujarat after issuing notification has issued Circular dated 15th May, 1992 directing the District Development Officer and the Collectors to initiate proceedings for recovering the land revenue at enhanced rate immediately. It was also directed to the concerned authority that arrears are to be recovered with effect from 1st August, 1989. Thereafter, the Taluka Development Officer has issued notice demanding land revenue at enhanced rate with effect from 1989-90 from the petitioners. It is case of the petitioners that various representations have been made by the petitioners to the various Revenue Authorities but the same have not been considered and proceeded further as per the notice of attachment of the property and sale by public auction.

#. Learned advocate Mr.Jadeja has submitted that such demand notice at the enhanced rate in pursuance of the Government Notification dated 8th April, 1992 and Circular dated 15th May, 1992 is illegal and contrary to the provisions of the Act. He also submitted that in representations, many disputed questions of facts have been raised by the petitioner contending that whether the enhanced rate will be applicable in respect of the petitioners or not. It is also contended that it depends on various factors as per the Notification and Circular

issued by the Government and the provisions of Rule 81 of the Bombay Land Revenue Rules. Learned advocate Mr.Jadeja has also submitted that enhanced rate demanded by the respondents from the petitioners is not according to the Rules. He also submitted that there is some difference of opinion between the authorities and the petitioners whether the Industries set up by the petitioners can be said to be village industry or commercial industry. Learned advocate Mr.Jadeja has submitted that demand of such enhanced rate with retrospective effect is also contrary to the Rules. He also submitted that before demanding the enhanced rate as per the Notification and Circular from the petitioners by the respondent authorities without giving of reasonable opportunity of hearing to the petitioner, is also contrary to the principles of natural justice. Learned advocate Mr.Jadeja has also submitted that the action of the respondent authorities is in violation of Articles 14, 19[1][g] and 265 of the Constitution of India. Learned advocate Mr.Jadeja has also submitted that the adjacent other lands have not been taken into account for giving the demand notice on enhanced rates and therefore this action of demanding enhanced rate from the petitioner is discriminatory. He also submitted that as per the agreement with the petitioners by the authorities to the effect that rate so fixed, cannot be revised for coming 30 years and therefore also, before revision of such rate or enhancement of the rates is also contrary to the agreement arrived at between the petitioners and the authorities. Furthermore, some other contentions have been raised in the present petition by the petitioners.

#. Learned advocate Mr.Jadeja has relied upon decision of the Division Bench of this Court in case of FIT TIGHT, NUTS AND BOLTS LIMITED V. STATE OF GUJARAT AND OTHERS reported in 1984 [1] GLR pg.261. Relying on the facts and ratio laid down in the aforesaid decision, Learned advocate Mr.Jadeja has submitted that action of the Collector of declassification of village Dharampur from Class-E of Table A of Rule 81[2] and fixed N.A. assessment accordingly while including the entire village into Class-B by notification which was challenged before this Court, ultimately, this Court has considered that declassification of village from one class to another class involving large financial implications for the petitioner and therefore, this Court has come to the conclusion that without giving any opportunity of hearing to the petitioners, such declassification Notification cannot be issued by the State Government.

#. Learned Government Pleader Mr.A.D.Oza appearing on behalf of the respondent authorities submitted that the Government is empowered under Rule 81 of the Bombay Land Revenue Rules [for short "the Rules"] to issue notification and can enhance the n.a. assessment rates and accordingly the Government has exercised its powers under Rule 81 of the Rules. Learned G.P. Mr.Oza has also submitted that thereafter circular issued by the State Government directing the District Development Officers and the Collectors to take appropriate proceedings for recovering the land revenue at enhanced rates immediately. He, however, submitted that the Government has acted as per the provisions of the Law and as such not violated the principles of natural justice. In short, learned G.P. Mr.Oza has supported the notification and the Circular issued by the State Government and ultimately requested this Court to reject all these petitions.

#. I have considered the contentions and submissions advanced on behalf of the respective parties. Considering the fact that as per the agreement between the parties, revision of n.a. assessment rate can be effected after 30 years. However, in the instant case, the State Government has revised and enhanced the n.a. assessment rate after period of 20 years only. The notification issued by the State Government on 8th April, 1992 and Circular on date 15th may, 1992 [which is quoted in the petition] involve many disputes questions of facts between the parties, such as, whether the industry being run by the petitioners is covered under which class of City, Town or village i.e. A,B,C,D,E or the same can be said to be village industry or small scale industry or it can be treated as commercial industry. These are disputed questions of fact. Similarly, the user of the petitioner, whether it can be said to be industrial one or the commercial and this aspect requires to be examined by the authority after extending reasonable opportunity of hearing to the petitioner. In the instant case, the State Government has straightaway exercised the powers under Rule 81 of the Rules and issued the notification enhancing the rate and thereafter, issued Circular directing the District Development Officers and Collectors to recover immediately the enhanced rate of n.a. assessment rate from the respective parties. Therefore, without giving reasonable opportunity of hearing to the petitioners, notification and circular issued by the State Government and on that basis, demand which has been made by the concerned authority to pay the enhanced rate of n.a.

assessment is contrary to the principles of natural justice. It also requires to be noted one important aspect that notification has been issued on 8th April, 1992 and thereafter the Circular issued on 15th May, 1992 making it effective with retrospective effect to recover the enhanced rate from the petitioners with effect from 1989-90. However, this transpires that this is retrospective implementation of the enhanced rate which was decided by the State Government with effect from 8th April, 1992 and Circular dated 15th May, 1992. Therefore also, such retrospective demand or implementation is also contrary to the Rules. Considering the facts with the view taken by the Division Bench of this Court in case of FIT TIGHT, NUTS AND BOLTS LIMITED V. STATE OF GUJARAT AND OTHERS reported in 1984 [1] GLR pg.261, according to my opinion, straightaway issuance of notification under Rule 81 of the Rules and subsequent issuance of the Circular by the State Government deciding enhancement of the n.a. assessment rate without giving an opportunity of hearing to the petitioners, seems to be contrary to the principles of natural justice and therefore, same requires to be interfered with by this Court.

#. It also requires to be observed one more important aspect of the matter that the petitioners herein hold Sanad which were issued by the Taluka Development Officer in favour of the petitioners respectively. In the said Sanad, various conditions have been prescribed by the Taluka Development Officer, of which, one of the conditions states that n.a. assessment rate as mentioned therein requires to be paid by the petitioners in respect of the land occupied by the petitioners respectively and similarly, the local fund and the education cess amount also require to be paid by the petitioners as mentioned. It is also necessary to note that as per the said Sanad, both the parties, meaning thereby, the State Government as well as the petitioners have agreed to the effect that the rate of n.a. assessment would be revised as per the Government policy every 30 years. Now looking to the Sanad, the rate of n.a. assessment is also fixed and mentioned in the Sanad as condition which requires to be paid by the petitioners to the authorities. However, at this juncture, provisions of Section 48 of the Bombay Land Revenue Code requires to be referred to and therefore, the same is reproduced as under :-

"48. [1] The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land -

[a] for the purpose of agriculture ;
[b] for the purpose of residence ;
[c] for the purpose of industry ;
[d] for the purpose of Commerce, or ;
[e] for any other purpose.]

[2] [Where land assessed for use for any purpose is permitted or deemed to have been permitted under Section 65, or as the case may be, under Section 65A, to be used for any other purpose, or is used for any other purpose without the permission of the Collector being first obtained or before the expiry of the period prescribed by Section 65, or, as the case may be, by Section 65A.] The assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate [with effect from the commencement of the revenue year in which the land is so permitted or deemed to have been permitted to be use or, as the case may be, is used without the permission of the Collector] by such authority and subject to such rules as the [State] Government] may prescribe in this behalf.

[3] Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

[4] The Collector or a survey officer may, subject to any rules made in this behalf under Section 214, prohibit the use for certain purposes of any any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.]

Under sub Section [2] of Section 48 of the Act which provides for an assessment of the land with reference to its use and Section 48 [2] provides for levy of altered assessment whenever there is change in the user of the land from one kind to another. Therefore, Section 48 [2] is not attracted so long as there is no alteration or change in the user of the land and no altered assessment can be levelled till actual user of the land is changed. Therefore, considering Section

48[2] and looking to the facts of the present case, there is no any change indicated by the authority in the demand notice that the petitioners have changed the user from the date of issue of Sanad by the State Authority. Therefore, assessment which has been altered by the State Government issuing notification and circular directing the District Development Officers as well as the Collectors to recover the enhanced rate of the n.a. assessment rate from the petitioners without giving any opportunity of hearing to the petitioners, is contrary to the principles of natural justice. Therefore, considering this fact, according to my opinion, if the respondent authorities will afford an opportunity of hearing to the present petitioners in respect of alteration of the n.a. assessment and to pass appropriate orders after giving reasonable opportunity of hearing to the petitioners, the same will meet the ends of justice.

#. In above view of the matter, impugned demand notice issued by the respondent authorities against the petitioners deserves to be quashed and therefore the same is hereby quashed and set aside with a direction to the respondent authorities to hear the petitioners to give reasonable opportunity of hearing before making any demand from the petitioners in respect of the n.a. assessment at enhanced rate as per the notification dated 8th April, 1992 and circular dated 15th May, 1992 and to pass appropriate orders in accordance with law after affording reasonable opportunity of hearing to the petitioners. However, during pendency of the decision with the authorities, the petitioners are directed to keep on paying the n.a. assessment at the rate as specified by this Court in interim order passed on 26th July, 1994.

#. It is made clear that this Court has passed this order only on the ground that principles of natural justice has not been followed by the respondent authorities while demanding enhanced rate of the n.a. assessment and therefore, this Court has not considered the merits of the matter and it is open to the respondent authorities to consider such aspect in accordance with law at the time of deciding the matter as directed by this Court.

##. In view of above observations and directions, all ten petitions of the group are allowed. Rule issued in each petition stands made absolute to the extent indicate hereinabove with no order as to costs.

Date : 4-12-2002 [H.K.Rathod, J.]

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